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No. 94-971

In the
Supreme Court of the United States
October Term, 1994

Eugene and Carol Campbell,

Petitioners

vs.

Leech Lake Band of Chippewa Indians, et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITIONERS' REPLY BRIEF

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INTRODUCTION

Petitioners Eugene and Carol Campbell have received a brief in opposition to their Petition for a Writ of Certiorari in this matter from the Leech Lake Band of Chippewa Indians, and a joint brief in opposition filed by the Minnesota Commissioner of Human Services and Beltrami County. Pursuant to Rule 15 of the Supreme Court Rules, the Campbells submit this reply brief responding to new issues raised in the responding parties' briefs.

ARGUMENT

In their briefs in opposition, the responding parties cite to a collateral adoption proceeding begun subsequent to the Minnesota Court of Appeal's decision involving relatives of the children, Melvin and Audrey Goodman. They argue that, because of the existence of this subsequent petition, the Campbells are seeking an advisory opinion from this Court. They further contend that there is no conflict between the states created by the Minnesota Supreme Court's decision, that the Minnesota Supreme Court simply and appropriately applied a higher standard to the placement and custody issues involving its Indian children, and that the Minnesota Supreme Court decision is fact-based and will not be applied in states outside of Minnesota.

A. THE CAMPBELLS ARE SEEKING MORE THAN AN ADVISORY OPINION.

As soon as the Campbells learned that the Goodmans had filed an adoption petition and had scheduled an initial hearing on their petition, they sought a stay from the Minnesota Supreme Court. As the documents included in the Campbells' petition and briefs in opposition indicate, the Minnesota Supreme Court denied that request, claiming that it no longer had jurisdiction over the matter. The Campbells then sought the stay from the

trial court. The Goodmans' adoption proceeding was stayed pending the decision by this Court on the Petition for Certiorari.

The Goodmans appeared in this proceeding very late in the history of the case. It was only after the Minnesota Supreme Court granted the petition to review the Minnesota Court of Appeal's decision that the Goodmans filed a motion with the Minnesota Supreme Court to either be allowed to intervene as parties or to appear as amicus curie. Over the objections of the Campbells, the Minnesota Supreme Court allowed the Goodmans to participate as amicus. Because the Goodmans did not participate in the trial, there has never been any opportunity for the Campbells to investigate or cross-examine the Goodmans, or for the trial court which reviewed the Campbells' adoption petition to also consider the Goodmans' adoption petition. There has never been any explanation offered by the Leech Lake Tribe, Beltrami County, or the Minnesota Department of Human Services as to why the Goodmans did not appear at the time of the trial court proceedings involving the Campbells and the placement of these three girls.

The Campbells believe the information contained in their affidavits regarding the status of the Goodmans was accurate at the time of those submissions. If one adopts the reasoning of the state and county, the Goodmans apparently would have had no obligation to step forward at the time the proceeding involving the Campbells was going forward, and the Goodmans' subsequently filed adoption petition should be allowed to effectively deprive the United States Supreme Court of jurisdiction to review this matter.

The state and county argue that because the Campbells rely on facts that are allegedly no longer true, namely that the Campbell home is the only adoptive home available to the children, the Campbells are requesting an advisory opinion from the Supreme Court. See, Brief in Opposition by Respondents Minnesota Commissioner of Human Services and Beltrami County, n. 1. In fact, the Campbells are requesting a reversal of

the Minnesota Supreme Court's decision and reinstatement of the trial court order allowing them to file and finalize their adoption petition and take immediate custody of the three girls. This is true substantive relief.

The responding parties have now conceded that Angelique Coffey is no longer available or interested in providing the children with foster care or adoption. She left the State of Minnesota shortly after the Minnesota Supreme Court rendered its opinion. The Goodmans have no right to proceed with an adoption at this time. The Goodmans were not present at the time the issues involving adoptive placement outside the preferences were before the trial court. No explanation has been offered as to why they were not present at that time, and the doctrine of res judicata now prohibits them from stepping forward at this late date in an effort to derail this appeal. The remedy available from this Court is reversal of the Minnesota Supreme Court and reinstatement of the trial court's decision.

B. THERE ARE LIMITS TO THE MINNESOTA SUPREME COURT'S ABILITY TO SET HIGHER PLACEMENT STANDARDS THAN THOSE FOUND IN ICWA.

The Tribe cites §1921 of ICWA for the proposition that in establishing the standards to be applied in state court proceedings involving Indian children, Congress allowed the state courts to set higher placement standards than those found in ICWA. The Minnesota Supreme Court did not apply §1921 nor purport to apply a higher state law standard, but rather limited itself to considering §1915. The Tribe, the state, and the county discuss in great detail the policies the Minnesota Supreme Court was advancing with its decision, overlooking the fact that Congress, not the Minnesota Supreme Court, sets the policies underlying this federal statute.

Indeed, the Minnesota Supreme Court was motivated by inappropriate policy considerations and ignored the fact that

Congress heard testimony regarding the need for this legislation and that Congress very carefully struck an appropriate balance in the application of the Indian preferences. It was not appropriate for the Minnesota Supreme Court to rewrite this carefully drafted statute nor was it appropriate for the Minnesota Supreme Court to elevate the BIA Guidelines to have the effect of statutory law.

C. THE RESPONDING PARTIES HAVE DISTORTED THE RECORD AND DISINGENUOUSLY ARGUE THAT THE MINNESOTA SUPREME COURT DECISION WILL BE CONFINED TO ITS FACTS.

The Tribe contends that these children have lived their entire lives on the reservation. That is directly contradicted by the findings of the trial court and the evidence presented which outlines their 15 placements. The Campbells stand by the finding by the trial court which was based on the evidence before the court. Appendix at A2-A5. The responding parties also contend that the Tribe had significantly more qualified expert witnesses testifying on their behalf. In fact, the Campbells had qualified expert witnesses testifying as to their position, and it is not the shear number of witnesses that must compel a trial court's decision. Rather, deference is to be given to the trial court to assess the experts and make determinations based on the substance of the testimony rather than the number of experts.

The state and county also argue that this is a case of limited precedential value outside the State of Minnesota as the case is confined to its allegedly unique factual circumstances. This argument is disingenuous when one considers that all of the responding parties went to great lengths to apply the unique facts of the various cases from other appellate courts to support their positions before this Court. They also tried mightily -- and ultimately futilely -- to reconcile the Minnesota decision with

other state court decisions.[1] That is exactly what future litigants will do with the Minnesota decision here under review if it is not reversed by this Court. As the Campbells have previously argued, the United States Supreme Court has not previously addressed the substantive aspects of this important federal statute which has been erroneously construed by the Minnesota Supreme Court. As this decision by the Minnesota Supreme Court involves a construction of a federal statute, this case will affect how courts across the nation interpret ICWA and it will carry enormous and erroneous precedential value.

CONCLUSION

For all of the reasons stated in their Petition for Certiorari, the Campbells request that the United States Supreme Court grant the writ and review this important case by the Minnesota Supreme Court erroneously interpreting a federal statute of national importance which this court has never previously reviewed as to its substantive content. Furthermore, the Campbells believe they are requesting specific relief from this court and something significantly more than an advisory opinion. The impact of the Goodmans' subsequent adoption petition does not alter this request for relief.

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[1] The state and county concede this chaos in the case law applying §1915 of ICWA when they note that "even if the decisions of state courts regarding the ICWA are not always consistent..." Brief in Opposition by Respondents Minnesota Commissioner of Human Services and Beltrami County, at 14.

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